

YAVAPAI COUNTY ATTORNEY'S OFFICE
JOSEPH C. BUTNER SBN 005229
DEPUTY COUNTY ATTORNEY
255 East Gurley Street
Prescott, AZ 86301
Telephone: 928-771-3344
ycao@co.yavapai.az.us

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JUL 15 PM 4: 55

JEANNE HICKS, CLERK

BY: B. Chamberlain

IN THE SUPERIOR COURT OF STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S MOTION FOR SANCTIONS
FOR DEFENDANT'S NON-DISCLOSURE
OF CRITICAL EVIDENCE PURSUANT
TO RULE 15.7

FILED UNDER SEAL

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Motion for Sanctions for Defendant's Non-Disclosure of Critical Evidence Pursuant to *Ariz. R. Crim. P.*, Rule 15.7. The State's position is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Defendant failed to disclose material he intends to use at trial.

Ariz. R. Crim. P., Rule 15.2(c)(3) requires a defendant "shall make available to the prosecutor for examination and reproduction the following material and information known to the defendant to be in the possession of control of the defendant ... [a] list of all papers, documents, and other tangible objects the defendant intends to use at trial."

RECEIVED

JUL 15 2010

DIVISION 6

1 On June 3, 2010, during his Opening Statement, John Sears, counsel for Defendant told
2 the jury:

3 Let's talk about what the evidence will really show about the life
4 insurance policies. ... But \$750,000 in two policies on Carol's life. ... Those
5 policies weren't mentioned in the divorce. They weren't divided in the divorce.
6 They weren't dealt with. They were just there. ...

7 Mr. DeMocker then persuaded them [Hartford Insurance Co.] that Mr.
8 DeMocker would disclaim this money. You will hear from Katie and
9 Charlotte that their father told them from the beginning, this is your money
10 from your mother. This isn't mine. **He disclaimed, he signed over any
11 interest to the girls, and the money was paid out to the girls.** That is what
12 happened in this case. So the idea dangling after the State's opening that Mr.
13 DeMocker killed her for the insurance money, has to be measured against
14 what the evidence really would be.

15 ... Wouldn't it be unusual and a head-scratcher **if he didn't get that
16 money for the girls, which is where the money went in this case?** That's
17 the motive. That is a hundred percent of the motive. He killed her because he
18 didn't want to pay her the alimony. He killed her over the squabble over the
19 \$4,500, and killed her for the insurance money in this case.

20 *Reporter's Partial Transcript of Proceedings Opening Statement by Mr. Sears, pages 30-32.*

21 The defendant had in his possession the three (3) Hartford Insurance Company
22 Disclaimers since March, 2009 but withheld this critical information from the State. The
23 defendant thereafter controlled the insurance proceeds, completely ignoring the Virginia Carol
24 Kennedy Probate Estate, directing the money to be paid for his benefit to his defense team.
25 The defendant knew the materiality of this information and Attorney Sears used this secreted
26 information in his opening statement to the jury in violation of *Ariz. R. Crim. P.*, Rule
15.2(c)(3). Mr. Sears told the jury "So the idea dangling after the State's opening that Mr.
Democker killer her for the insurance money, has to **be measured against what the evidence
would really be.**" The evidence is all contained in the State's 69th, 70th and 71st disclosures

1 and this jury is entitled to here the truth of what transpired with the Hartford Life Insurance
2 Proceeds.

3 The disclaimers and the distribution of the proceeds were well known to the defendant,
4 were in his possession since March 2009 and were used by defendant's attorney in the opening
5 statement. i.e. **"he signed over any interest to the girls, and the money was paid out to the**
6 **girls."** The Arizona rules of disclosure are intended to provide the parties with an even playing
7 field. The defendant willfully withheld this material information and now is attempting to
8 ambush the State in this case.
9

10 The defendant is trying to use the rules of disclosure against the State claiming the lack
11 of due diligence for failing to discover the evidence he intended to be kept secret. If this was
12 so completely innocent, why was the \$700,000,00 in insurance proceeds withheld from the
13 Probate Court? Why did they not go to the Probate Judge for permission to replace Katie
14 Democker as trustee? Why did they not go to the Probate Judge for permission to appoint
15 Renee Girard as successor trustee? Why did they not petition the Probate Court from
16 permission to modify the terms and conditions of the trust so the money could be used for a
17 "family in crisis?"
18

19 The Estate of Virginia Carol Kennedy was commenced as a Formal Probate, pursuant
20 to A.R.S. 14-3409 which submits the estate, the personal representative and trustee to the
21 jurisdiction of the Probate Court. The alleged modifications to the trust were never presented
22 to the Probate Judge.
23

24 To reward the defendant for "hiding the ball" is to ignore the defendant's duty to
25 disclose material information in his possession that is intended for use at trial. As the Court is
26 aware, until attorney Sears in his opening statement told the jury "what the evidence would

1 be", the State was absolutely unaware of the disclaimers and of the payment of insurance
2 proceeds, and of the slippery fashion those proceeds filtered back to pay defendant's attorney
3 fees.

4 Immediately upon learning of the distribution of funds, the State began issuing
5 subpoenas for material related to the life insurance claims. Disclosure of the material received
6 pursuant to the subpoenas began on July 1, 2010. The State anticipates additional material will
7 be received in the coming days and weeks and the defendant has been notified of this.
8

9 ***II. Relevance of the insurance disclaimers.***

10 Disclaimer, pursuant to A.R.S. 14-10002(3), means "the refusal to accept an interest in
11 power or property." "The disclaimer takes effect as of the time the instrument creating the
12 interest becomes irrevocable..." A.R.S. 14-10006 (1).
13

14 The defendant's disclaimers, by law, **irrevocably** cut him off of any right, title, or
15 interest in the insurance proceeds. Yet, as the State has argued to this court and through the
16 documents attached to its motion for determination of counsel (incorporated entirely herein by
17 this reference) prove the defendant maintained complete control over the proceeds for his
18 benefit and his benefit alone.
19

20 ***III. Pursuant to Rule 15.7 sanctions are appropriate.***

21 Rule 15.7 provides:

22 If a party fails to make a disclosure required by Rule 15 any other party may
23 move to compel disclosure and for appropriate sanctions. The court shall order
24 disclosure and shall impose any sanction it finds appropriate, unless the court
25 finds that the failure to comply was harmless or that the information could not
26 have been disclosed earlier even with due diligence and the information was
disclosed immediately upon its discovery. All orders imposing sanctions shall
take into account the significance of the information not timely disclosed, the
impact of the sanction on the party and the victim and the stage of the

proceedings at which the disclosure is ultimately made. Available sanctions include, but are not limited to:

(1) Precluding or limiting the calling of a witness, use of evidence or argument in support of or in opposition to a charge or defense, or

(2) Dismissing the case with or without prejudice, or

(3) Granting a continuance or declaring a mistrial when necessary in the interests of justice, or

(4) Holding a witness, party, person acting under the direction or control of a party, or counsel in contempt, or

(5) Imposing costs of continuing the proceedings, or

(6) Any other appropriate sanction.

CONCLUSION

Here, the appropriate sanction is to impose all of costs and attorney fees incurred by the State to investigate the insurance issue. These costs begin on June 3, 2010 and continue until this motion can be heard by the court.

In addition, since the defendant violated Rule 15.7, all of the evidence from the disclaimers to the payout of the proceeds by the Hartford Insurance Company traced to the bank account of Janice Democker, and beyond, to show how the defendant benefited in this scheme. This evidence was promised to the jury by Mr. Sears. This includes the material included in the State's 69th, 70th, and 71st Supplemental Disclosures.

Defendant failed to disclose material defense counsel offered in opening statement and that he intended to use at trial in violation of Rule 15.2 and 15.6. Once the State learned the insurance proceeds had been paid, it quickly obtained the material (State's 69th, 70th, and 71st Supplemental Disclosures) in spite of Defendant's attempts to keep the information secret..

Office of the Yavapai County Attorney

255 E. Gurley Street, Suite 300

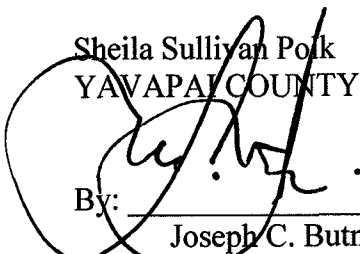
Prescott, AZ 86301

Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 The material is highly relevant evidence, because it proves Defendant's motive in the
2 murdering of Carol Kennedy.

3
4 RESPECTFULLY SUBMITTED this 15th day of July, 2010.

5
6
7 Sheila Sullivan Poik
YAVAPAI COUNTY ATTORNEY

8
9 By: 
10 Joseph C. Butner
Deputy County Attorney

11
12 COPIES of the foregoing delivered this
13 15th day of July, 2010 to:

14 Honorable Warren R. Darrow
Division 6
15 Yavapai County Superior Court
16 (via email)

17 John Sears
511 East Gurley Street
18 Prescott, AZ 86301
Attorney for Defendant
19 (via email)

20 Larry Hammond
21 Anne Chapman
Osborn Maledon, P.A.
22 2929 North Central Ave, 21st Floor
Phoenix, AZ
23 Attorney for Defendant
24 (via email)

25 By: 
26